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P-4004-1

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

APPLICANT: MATTHEW GUTTMAN  
FOR: EDUCATIONAL GAME WITH DEMONSTRATED TASK  
ACHIEVEMENT  
SERIAL NO.: 10/663,543  
FILED: September 17, 2003  
EXAMINER: Dmitry Suhol, Examiner, Art Unit 3712

**NOTICE OF APPEAL  
AND  
BRIEF OF APPLICANT**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**NOTICE OF APPEAL**

Applicant appeals the Final Rejection of 06/10/2004 and herewith submits the requisite fee of \$165.

08/20/2004 BSAYASI1 00000039 10663543

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330.00 DP

**BRIEF OF APPLICANT**

Applicant herewith submits the requisite fee of \$165 and BRIEF OF APPLICANT as follows:

**1. Real Party in Interest**

The applicant above named.

**2. Related Appeals or Interferences**

None.

**3. Status of Claims**

There is one claim on appeal as set forth in the appendix.

**4. Status of Amendments After Final Rejection**

None.

**5. Summary of Invention**

**Lines      Page 2**

20      Illustrated in the drawings is a game, generally designated 10, that provides a play  
21      value activity for children in conducting multi-task testing, such as matching and thus teaching what  
22      constitutes colors, i.e., what the color “purple” looks like as one exemplary task, interconnecting  
23      male and female connectors and thus teaching shape recognition and thus what “male” shape is

**Page 3**

1. connectable to a “female” shape as another exemplary task, and other tasks limited only to the
2. imagination of the game manufacturer.

\* \* \*

16. Game 10 includes a game board 16 of a preferred rectangular shape having opposite
17. long sides 18 and 20, and along each side at five locations 22, 24, 26, 28 and 30, are appropriately
18. attached by Phillips head screws 32 the ends, individually and collectively designed 34 of one group
19. of five straps, also individually and collectively designated 36, dyed selected colors labeled as
20. illustrated, “gray,” “black,” “red,” “purple” and “blue,” so that in the first group, the gray strap 36 is
21. at the attachment site 22, the black strap 36 at the attachment site 24, the red strap 36 at the
22. attachment site 26, the purple strap 36 at the attachment site 28, and the blue strap 36 at the
23. attachment site 30.

1. A second group of straps 36 is similarly attached as just described for the first group  
2. but to the opposite side 20 of the game board 16 and at different locations or attachment sites for the  
3. same colors, so that in the second group the blue strap 36 is at the attachment site 22, the purple  
4. strap 36 is at the attachment site 24, the red strap 36 is at the attachment site 26, the black strap 36 is  
5. at the attachment site 28, and the gray strap 36 is at the attachment site 30.

6. In accordance with the present invention, the supervising adult 12 at least by either  
7. voice explanation or actual demonstration, or both, communicates to the child 14 that the straps 36  
8. connect to each other, providing this communication for each of the cooperating pairs of straps 36  
9. and, in the process, teaches shape recognition of the connectors, soon to be described, at the free end  
10. of the straps 36. It is to be noted that the adult 12 is instructed to appropriately communicate  
11. approval to the child when strap ends are successfully connected, either vocally, by clapping, or  
12. otherwise. In practice, the connecting of the straps 36 has been readily noted as having play value  
13. for the child, wherein the child 14 often requests the playing of the game 10, and by trial and error  
14. learns what connectors connect to each other.

15. Having established the communication by the child 14 to the adult 12 of successful  
16. interconnection of the strap ends, the supervising adult 12 for the next task then instructs the child  
17. 14 to identify the color "purple" as a first color recognition to be taught, either vocally, by  
18. demonstration, or both, again providing approval when the two "purple" straps 36 are correctly  
19. interconnected. This is the procedure followed for each of the straps of the color involved, and is  
20. repeated to the satisfaction of the adult 12 that the child 14 has learned and can successfully perform

- 21 the task of color recognition, i.e., that the child knows what the color “purple” looks like, and so on  
22 for the other colors. The purple straps 36 are those gripped by the child 14 in Figs. 2 and 4.

**Page 5**

- 1           **It is at this point in accordance with the practice of the present invention, that adult**  
2           **intervention is required in the setup of the game board 16. At least one group of straps 36, or at the**  
3           **option of the adult, also the other group, are changed in their attachment sites 22 -30 to the side 18,**  
4           **and in the exercise of the option and as illustrated in Fig. 3, changes in sites 22 – 30 to the side 20**  
5           **the changes of which that are made being readily understood from a comparison of Figs. 1 and 3.**

- 6           Following the change in the attachment sites of the straps 36, the child 14 is  
7           instructed to select, an instruction effectively communicated and by now understood by the child to  
8           be demonstrated by strap end interconnection, the color “purple” and the child it has been observed  
9           in practice will often accurately make and demonstrate this selection by a correct strap end  
10          interconnection. In the prior art, the task being taught and demonstrated, such as color recognition,  
11          was not known to a certainty to be based on recognition, it having not been ruled out that it might  
12          have been made on another basis. For example, in this case, the “purple” straps 36 are known by  
13          the child to extend from attachment sites 28, 24 as illustrated in Figs. 1 and 2, and in the subsequent  
14          selection any other basis of selection other than color recognition, the task that the child is being  
15          taught, must be ruled out. In this case, and contributing to the present invention, the ruling out of  
16          any other basis of selection other than color recognition is achieved by the adult intervention of  
17          changing the attachment sites as illustrated in Figs. 3 and 4, wherein the first demonstration of Fig. 2  
18          and the second demonstration of Fig. 4 are likely of color and interconnection means

19 comprehension and not of board locations or attachment sites 22 – 30 because of the change of the  
20 locations attachment sites between the Fig. 2 and Fig. 4 demonstrations.

21 To facilitate making the attachment site changes, eyelets 38 are embodied in the  
22 strap ends connected by Phillips head screws 32 to the game board 16, and consequently are readily  
23 unscrewed and screwed in place.

**6. Issues pursuant to 37 CFR 1.192(e)(6).**

**Issue A**

Whether claim 1 is properly rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

**Issue B**

Whether claim 1 is properly rejected under 35 U.S.C. 103(b) as being unpatentable over Peat '623 in view of Kroll '687,

**7. Grouping of Claims**

Grouping does not apply.

**8. Argument pursuant to 37 CFR 1.192(c)(8).**

**Issue A**

In addition to specific identified limitations to the claim, the examiner argues that “[it further appears that the above limitation(s) is/are directed to a method step(s) in a product type claim and have therefore been given little patentable weight.” (underlining added)

Applicant challenges this refusal of the examiner to factor into the assessment of the allowability of claim 1 the method steps recited therein presumably under the authority of 35 U.S.C. 112, second paragraph which provides:

"The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention."

Applicant's claim is in compliance with the above, and not affording the applicant "patentable weight" of the recited method steps is lacking in statutory authority.

Turning now to the claim limitations, which the examiner argues cannot be determined, they are specified as follows:

1.     **D. first selected operative positions of said second group of said five straps on an opposite side across from said one side of said game board;**

The above can be determined from the disclosure on page 4, in lines 1-5 of "Summary of Invention".

2.     **E. five first cooperating interconnecting of means respectively attached to free ends of said straps effective upon interconnection of demonstrating by a user of said game a selection of said two interconnected straps one from said first group of at least five straps and the other from said second group of at least five straps;**

The above can be determined from the disclosure on page 2, lines 22, 23, page 3, line 1 and page 4, lines 6-10 of "Summary of Invention".

Since two groups of "five" in number straps are identified, and each one of two such straps in a group of two has cooperating male and female interconnecting means, it follows that sentences 1 and 2 of subset E can be determined.

In the second line of subset E there is reference to "upon interconnection" of the previously referred to "free ends of said straps" and still previously in the claim line 1, a reference to "cooperating interconnecting", the totality of what is referenced applicant contends provides antecedent basis for "said two interconnected straps".

**3. G. subsequent five second cooperating interconnections of said cooperating interconnecting of means respectively attached to free ends of said straps effective upon interconnection of demonstrating by a user of said game a selection of two interconnected straps one from said first group of at least five straps and the other from said second group of at least five straps;**

The above can be determined from the disclosure in bold type on page 5, lines 1-5, and lines 6-20 of "Summary of Invention".

Still in reference to subset G, the examiner argues that there is no antecedent basis for "said first and second board locations", but the text quoted does not appear in subset G.

The quoted text does appear in the "whereby" clause and the antecedent basis, assuming arguendo that one is required for a "whereby" clause, is provided by the totality of the subsets A-G.

### **Issue B**

The examiner argues that Peat is a 103(a) anticipatory reference except that it fails to teach a color associated with his straps. To make this argument, there would have to be a disclosure in Peat of what applicant proffered as underlying the invention is the understood communication to a supervising parent or adult 12 of the achievement of the assigned task by the child 14, who may be too young to vocalize the achievement by saying, for example, while pointing to a "purple" object, "this is purple." (application page 3, lines 3-6)

Applicant on this point, explains that an equally formidable impediment to an effective communication from a child 14 to a supervising adult 12 is that of a task achieved on one basis, but not on the basis that was intended to be tested. For example, a child asked to select an object, in this case in the specific form of a strap, of a specified color, may select such a colored strap but not because of a correct recognition of what this color looks like, but because of its physical location in

the game materials supplied. As will be better understood as the description proceeds, the playing of the game 10 as generally illustrated in Fig. 7 is designed to provide an understood communication of the achievement of the task on the basis requested, and not on some other basis, thus contributing to the educational value of the game. (supra, lines 7-15)

**Example of a game scenario**

Assume that a child requested to match the blue straps does so correctly. An hour later, or perhaps the next day, the child is again requested to match the blue straps and again does so correctly. The parent cannot be sure if the child comprehends what the appearance is of the color blue, or has merely duplicated the locations of the blue straps in making the interconnection. This is the shortcoming of Peat '623.

In contrast in applicant's game assume a child correctly connects the blue straps. At this point there is an intervention of the parent in changing the locations of the blue straps, i.e., claim subset F. Then when the child again correctly connects the blue straps, the parent is warranted in assuming the child comprehends what the appearance is of the color blue because the location of the blue straps has been removed as a factor.

In Peat '623, the straps are permanently attached and the locations accordingly cannot be changed to implement claim subset F, and thus Peat '623 fails to teach more than what is acknowledged by the examiner.

Overruling of the rejection of claim 1 as being unpatentable over Peat '623 in view of Kroll '687 is respectfully requested.

Respectfully,

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## APPENDIX

Claim 1. An educational game characterized in providing a demonstration of task achievement comprising:

- A. a game board of rectangular shape;
- B. a first group of at least five straps each of a different selected color and a second group of at least five straps each of a different selected color but of the same different colors of said first group;
- C. first selected operative positions of said first group of said five straps in attached relation at first selected locations along one side of said game board;
- D. first selected operative positions of said second group of said five straps on an opposite side across from said one side of said game board;
- E. five first cooperating interconnecting of means respectively attached to free ends of said straps effective upon interconnection of demonstrating by a user of said game a selection of said two interconnected straps one from said first group of at least five straps and the other from said second group of at least five straps;
- F. second selected locations in replacement of said first selected locations of said first group of at least five straps on said one side of said game board and said second group of at least five straps on said opposite side of said game board; and
- G. subsequent five second cooperating interconnections of said cooperating interconnecting of means respectively attached to free ends of said straps effective upon interconnection of demonstrating by a user of said game a selection of two

interconnected straps one from said first group of at least five straps and the other from said second group of at least five straps;

whereby said first and second demonstrations if of the same color demonstrate comprehension of color and not duplication of said first and second board locations